

HOW TO APPEAL A COMMISSION DECISION

When a local historic district commission denies an application for a certificate of appropriateness, a notice to proceed, or some other type of permission, the applicant may not legally undertake any exterior work, including demolition, unless the decision is appealed and is ultimately modified or set aside by higher authority.

Michigan's Local Historic Districts Act (1970 PA 169, §5; MCL 399.205) provides that an applicant aggrieved by a commission's decision may appeal to the State Historic Preservation Review Board, which is an agency within the Michigan State Housing Development Authority. The Board's members possess expertise in history-related disciplines, and the Board has authority to affirm, modify, or set aside a commission's decision. However, before anyone petitions the Board for relief, **every effort should be made to resolve the historic preservation dispute at the local level.**

INSTRUCTIONS FOR FILING:

To appeal an adverse commission decision, an aggrieved applicant should mail or deliver a written claim of appeal, in any form or format, to the State Historic Preservation Review Board, Michigan Library and Historical Center, 702 W. Kalamazoo Street, PO Box 30740, Lansing, MI 48909-8240. The appeal may be faxed to 517-335-0348. By law, appeals must be filed **within 60 calendar days** after the applicant has received written notice of a denial or other adverse action of the commission. **A copy of the notice must accompany the appeal.** In addition, the appeal must clearly state it is an "appeal" and must also indicate the reason or reasons for reversing the denial. Pre-filing inquiries may be directed to the Board's Historic Preservation Law Office at 517-373-4765 or 517-373-1949.

ADMINISTRATIVE HEARINGS

After a claim of appeal is received, the Review Board will refer the matter to the State Office of Administrative Hearings and Rules (SOAHR) for further proceedings. SOAHR will assign an Administrative Law Judge (ALJ) to handle the case and will typically schedule an administrative hearing. The hearing represents an opportunity for the petitioner and the commission to present evidence and make legal arguments. SOAHR will inform all parties of the date, time and place of the hearing. In lieu of a hearing, a petitioner may choose to submit his or her evidence and arguments in documentary form. If a hearing is scheduled but the petitioner subsequently decides not to attend, the petitioner should so inform the ALJ prior to the hearing. Parties may contact SOAHR at SOAHR, PO Box 30695, Lansing, MI 48909 or via phone at 517-335-2484 or fax at 517-335-6696.

Petitioners have the burden of proof in administrative proceedings. Thus, petitioners must be prepared to prove how the commission erred and explain why the commission's decision should be modified or reversed. Petitioners may represent themselves during their appeals or they may employ an attorney.

POSSIBLE ISSUES

Every administrative appeal is unique, and claims of commission error will differ. However, the following list contains examples of claims of error that petitioners have previously alleged:

1. The historic district commission acted arbitrarily or capriciously.
2. The commission should have determined that the resource is a hazard to public safety.
3. Historic resource continuation will deter an improvement program of community benefit.
4. The commission improperly applied the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

5. Historic resource retention will cause the property owner undue financial hardship.

Again, appeals must specify the reason(s) why the petitioner feels the denial was legally erroneous.

EVIDENCE

As noted above, appellants have the burden of proof and thus must prove the occurrence of the errors they have alleged. To do this, petitioners typically present legally sufficient evidence at their hearings. Evidence may consist of documents like labor estimates and price quotes. Petitioners may also present sworn testimony from themselves and from other witnesses, such as contractors who have inspected the historic building and have personal knowledge of its condition. Photographs, designs, and drawings, etc., may also be offered.

Petitioners should begin preparing for their hearings well in advance. In other words, a petitioner should not wait until shortly before the hearing day to begin collecting evidence. Orderly presentations are helpful to everyone. A party should **bring at least three (3) copies** of each exhibit intended for submission.

Petitioners must present certain evidence in every case. The required evidence consists of:

1. The original (or a copy) of the written notice from the commission denying the petitioner's application to perform desired work in the historic district.
2. The original (or a copy) of a document verifying the petitioner has a legal interest in the property. This could be a deed, purchase agreement, land contract, or lease.

LEGAL REPRESENTATION

If a petitioner employs an attorney as a legal representative, the petitioner's lawyer should file an appearance with SOAHR. The lawyer's appearance may be faxed to SOAHR at 517-335-6696.

COMMISSION REPRESENTATIVES

Most commissions send at least one staff member or other representative to the administrative hearing. Sometimes this representative will testify. Also, commissions regularly submit relevant documents maintained in their files. Such documents are usually admitted into the official hearing record. The commission's representative, who may be a city attorney, will also be expected to submit copies of local historic district ordinances, as well as other pertinent material like meeting minutes and local restoration guidelines.

PROPOSED AND FINAL DECISIONS

After the hearing, the ALJ will prepare a "Proposal for Decision" for the Review Board's consideration. SOAHR will send a copy of the proposed decision to the petitioner or the petitioner's attorney and to the commission's legal representative. If either party is dissatisfied with any aspect of the proposal, the party may file written "exceptions" with the Board. The Review Board will then consider the ALJ's recommended decision, along with any exceptions, at its next regularly scheduled meeting. After reviewing all materials, the Board will issue its Final Decision and Order in the case. Copies will be sent to the parties and their attorneys. Typically, the Final Decision and Order is issued within a month after the appeal is considered by the Board.

APPEALS OF REVIEW BOARD DECISIONS

A petitioner who is dissatisfied with the Board's Final Decision and Order may appeal to court. Appeals must be filed with the circuit court that has jurisdiction over the commission whose decision was appealed to the Board. The appeal must be filed in court within 60 days after issuance of the Final Decision and Order.